22 SEP 2021 · 17:16 PM GMT+8

AQUATIC ANIMALS

هَذِهِ المَقَالَةُ وَقْفٌ لِلّٰهِ وَتَعَالَى سُبْحَانَهُ

THE PERMISSIBLE AND THE PROHIBITED

A translation of
Al-Mawsūʿah al-Fiqhīyyah al-Kuwaytīyyah, vol. 5, pp. 127–32

GRANADA PUBLICATIONS

TRANSLATOR'S PREFACE

All praise belongs to Allāh, Lord of all the worlds. May peace and blessings be upon our Prophet Muḥammad, upon his family, his companions and all those who follow his guidance until the Day of Judgment.

This work was sparked by a question from an acquaintance regarding the rulings of seafood that are not fish, such as prawns and crabs. A friend of mine, Kabeeru جزاه الله خيرا, directed me to this segment from the encyclopedia and after skimming, I found that it was sufficient and decided to translate it. This is the fruit of that endeavor. The remainder of this preface discusses editorial decisions.

The translations of the meanings of the Quran are from Saheeh International. The matter is technical and Arabic was the original medium. Thus, I left some words untranslated so that their connotations in Arabic are considered. I left some others since they were from the terminology of the Jurists.

I removed all references in the footnotes of the original since they were aimed at researchers. However, I translated the notions of some which I deemed important. I also added extremely brief biographical notes of lesser-known scholars. Phrases which are not in the text but required to make the sentence flow in English or provide clarity in meaning or add some beneficial point(s) are surrounded by ‹brackets like this.› There is no problem with the headings; they occur as a numbered list in the original with the discussion of aquatic animals starting at item no. 15.

ACKNOWLEDGMENTS

I thank all those who contributed in some way to this translation: Ustadh Abū Ḥassān ʿAlī; Ustadh Abu Sofiane; Lobna Hosny; Saada Bello; Mona Zanefeer; and Riham Ramzy.

I would also like to thank Abdul Aleem of Fluent Arabic and Ustadh Dr. Shuayb Wani, who went through the translation to ensure its accuracy.

May Allāh ﷻ accept from us all.

Khalid Hussain
Dār al-Iḥsān, Malaysia
14 Ṣafar 1443
Telegram: KhalidHussain
Email: mohammad.khalid.hussain@gmail.com

15

What is meant by aquatic animals are those that live in water; be it saltwater or freshwater, from the seas, or from rivers, or from lakes, or from springs, or from small streams, or from wells, or from swamps, or other than these.

According to the Ḥanafīs, nothing from aquatic animals is permissible except *samak*;[1] it is permissible regardless if it has scales or not.

There are two kinds of aquatic animals over which the Ḥanafīs differ due to disagreement of their being considered *samak* or other aquatic animals: the eel and the silurus (a type of catfish).

Imam Muḥammad ibn al-Ḥasan[2] was of the opinion that their consumption is impermissible but the preponderant opinion of the Ḥanafīs is permissibility in their ‹consumption› for they are from *samak*.

‹However› they exempt from *samak* that which are *ṭāfī* for these are not ‹to be› consumed. *Ṭāfī* refers to those ‹*samak*› that die in water by themselves without external cause, irrespective if they rise to the surface of the water or not; and this is what's correct.

‹Such *samak*› are called *ṭāfī* because if they die by themselves – even if they do not rise to the surface of the water – consideration is given to what mostly happens. This is because, usually, when it dies of itself, it rises to the surface of the water.

The reasoning of the impermissibility of *ṭāfī* is the possibility of it having gone bad; when it dies by itself, it cannot be determined how and when it died by examining it.[3] As for those *samak* which are killed due to an external cause, then there is no difference between this and between fishing out with nets where they (i.e *samak*) die in the air.

If a *samak* is swallowed by another *samak*, then, the inner ‹swallowed› *samak* can be consumed for it has died due to an external cause, i.e. its being swallowed.

If *samak* die due to heat or cold or polluted water, then there are two narrations from the Ḥanafīs:

1. Such *samak* are not to be consumed since these three things are not usually causes of death. What is apparent is that any *samak* that dies of itself is to be considered *ṭāfī*.

2. Such *samak* can be consumed since those three things are, after all, causes for death, and thus they are dead due to external causes and they will not be considered *ṭāfī*; and this ‹view› is clearer and relied upon in verdicts.

If *samak* are taken alive, it is impermissible to eat them until they die or are killed.

They prove the impermissibility of *ṭāfī* using the following evidences:

A. The *ḥadīth* found in Abū Dāwūd narrated on the authority of Jābir ibn ʿAbd Allāh رضي الله عنه that the Prophet ﷺ said,

مَا أَلْقَى البَحْرُ أَوْ جُزِرَ عَنْهُ فَكُلُوهُ، وَمَا مَاتَ فِيهِ فَطَفَا فَلاَ تَأْكُلُوهُ.

«Whatever the sea throws out or is left behind when the tide ebbs, eat it, but whatever rises to its surface, do not eat it.»[4]

---

[1] I could not find an accurate definition for this word. Some dictionaries mention that they are aquatic vertebrate creatures that have gills and fins. However, this would exclude whales as they don't have gills. It would also exclude prawns and shrimps (إِرْبِيان · رُوبِيان · جَمْبَرِي) which are invertebrate and don't have fins. However, they are *samak* according to the Arabic language. The best course of action is to check if a certain aquatic creature is considered *samak* linguistically. This is probably what the author of *al-Taʿrifāt al-Fiqhīyyah* alluded to when defining *samak*: (...مَا يُقَالُ لَهُ: إِنَّهُ سَمَكٌ). Allāh ﷻ knows best.

[2] Imam Muḥammad ibn al-Ḥasan (d. 189H) was a Muslim jurist, *muḥaddith*, and scholar of the Arabic language. He is one of the two well-known students of Imam Abū Ḥanīfah (d. 150H) who helped to spread his madhhab رحمه الله. He was nicknamed the Disciple of Abū Ḥanīfah and Jurist of Iraq.

[3] This is important as bacterial growth can cause seafood poisoning. An example of such is Scombroid seafood poisoning. It is caused by fish that naturally have high levels of histidine, which is converted to histamine due to bacterial growth. Subsequent cooking, smoking, or freezing does not eliminate the histamine which is harmful to health.

[4] It was also reported by Ibn Mājah رحمه الله. Al-Damīrī رحمه الله said of it in his annotation to Ibn Mājah, "It is a weak *ḥadīth* by consensus of all Ḥuffāẓ; it is impermissible to quote as evidence."

Similar is narrated by Saʿīd ibn Manṣūr through Jābir ﵁ in *marfūʿ* form as well.

B. *Āthār* from Jābir ibn ʿAbd Allāh, ʿAlī ibn Abī Ṭālib, and ʿAbd Allāh ibn ʿAbbās ﵃; that they used to prevent ‹people› from eating *ṭāfī*. The wording of Jābir ﵁ in a narration is:

مَا طَفَا فَلَا تَأْكُلُوهُ، وَمَا كَانَ عَلَى حَافَتَيْهِ أَوْ حَسَرَ عَنْهُ فَكُلُوهُ.

"What rises to the surface, don't eat; and what is on its two shores or washed ashore on them, eat."

In another narration, ‹his wording is:›

مَا حَسَرَ المَاءُ عَنْ ضَفَّتَيِ البَحْرِ فَكُلْ، وَمَا مَاتَ فِيهِ طَافِيًا فَلَا تَأْكُلْ.

"Whatever the water washes ashore on the two shores of seas, eat; what dies in it as *ṭāfī*, don't eat."

ʿAlī's ﵁ wording is:

مَا طَفَا مِنْ صَيْدِ البَحْرِ فَلَا تَأْكُلُوهُ.

"What rises to the surface from the game of the sea, don't eat it."

...and Ibn Abbas' ﵄ wording is:

لَا تَأْكُلُ مِنْهُ – أَيْ مِنْ سَمَكِ البَحْرِ – طَافِيًا.

"Don't eat from it – i.e. from the *samak* of the sea – the *ṭāfī*."

16

‹Some› others besides the Ḥanafīs considered permissible every sea animal, without slaughtering, even the *ṭāfī*, and even if it didn't live its entire life under water, such as crocodiles, sea turtles, frogs, and sea crabs.

The Jurists don't count seabirds as ‹being from› the sea since they don't live under the surface of the water. They are above it and dive into it due to need and then fly off. Thus, they are not permissible according to them, except by slaughtering.

The Malikis with regard to seals (Ar. lit. sea dogs) and dolphins (Ar. lit. sea pigs) have an opinion in permissibility and another in *karāhah*. The preponderant opinion regarding seals is permissibility and regarding dolphins is *karāhah* (i.e. *karāhah tanzīhīyyah* according to the Ḥanafīs).

They (i.e. the Jurists) differ regarding merpeople[5] (Ar. lit. people of the sea). Some declare them impermissible while others permissible. The latter is the preponderant view. The Mālikīs clarified the frying and grilling of *samak* without cutting open its stomach, even if alive, saying that "...this is not considered torture since its life outside of water is like that of a slaughtered animal."

17

According to the Shāfiʿīs, slaughtering is *mustaḥab* for those ‹animals› with long lifespans such as big *samak*. The slaughtering is from the direction of the tail for *samak* and from the neck for those ‹*samak*› that resemble land animals. As for those with short lifespans, slaughtering and being cut up alive is *makrūh*.

And this distinction in general permissibility is the preponderant view among them. Besides this, there are two other views:

1. Nothing besides *samak* from aquatic animals is permissible just like the Ḥanafī *madhhab*;

2. That which resembles what is eaten from land animals, such as sheep, is permissible. But that which resembles what is not eaten

[5] The compilers of the encyclopedia ﵀ relayed what the jurists of the different *madhāhib* have stated regarding the ruling of merpeople as recorded in their sources so as to relay *fiqh* with academic integrity. There is no place to criticize the jurists of the past in their resolution for a *fiqh* ruling of a creature now considered mythological. This is because they based their resolution on the numerous reports received from fishermen, explorers, travelers, etc. which were hard to pass as lies; it was a possibility. At the same time, they could not verify its authenticity. Thus, it was obligatory for them to determine its ruling based on the possibility of authenticity. This was even more so due to the long-held belief that the wonders of the seas and its creatures are greater and more numerous compared to those of dry land and that there is a marine counterpart for every land creature. ‹For details of the latter, see Wikipedia: Marine counterparts of land creatures.›

from land animals, such as those that look like dogs and donkeys, are impermissible.

According to the Shāfiʿīs, *barmāʾī* (amphibious; *not* amphibians) animals, i.e. those that can permanently live in either land and water, are impermissible if they do not have a counterpart on land that can be eaten. Examples of such that they give are frogs, crabs, sea snakes, *nasnās*,[6] crocodiles, and turtles. And prohibition of the *barmāʾī* types is what al-Rāfiʿī[7] and al-Nawawī lean towards in *Al-Rawḍah* and its original[8] and it is what al-Ramlī[9] depended on.

However, al-Nawawī retracted ‹his opinion› in *al-Majmūʿ* thus: that the dead of whatever can truly live in water is permissible, even if it is able to live on land, with the exception of frogs; this is the relied upon opinion according to al-Khaṭīb[10] and Ibn Ḥajr al-Haytamī,[11] who added [to the exemption] anything that has poison.

Based on this, if crabs, snakes, *nasnās*, crocodiles, and turtles, are truly aquatic animals, they are permissible and no consideration should be given to their ability to live on land. However, if they are truly land animals, then they are impermissible.

Regarding Noah's Ark shell[12] (Ar. الدنيلس), Ibn ʿAdlān[13] issued a verdict declaring its permissibility. It is known from Shaykh ʿIz al-Dīn Ibn ʿAbd al-Salām[14] that he issued a verdict declaring its impermissibility.

Geese and ducks should not be considered as animals that can live on both land and in water for they cannot live in water all the time; thus, they are seabirds and are not permissible except with slaughtering as will come.

According to the Shāfiʿīs, swallowing live *samak* is *makrūh* if it doesn't harm and similarly the eating of small *samak* along with what is in their tracts. It is allowed to fry and grill them without slicing open their stomachs but this is *makrūh* if the *samak* is still alive. Whatever the case may be, such *samak* don't render grease ‹in which it is cooked› *najis*.

18

The Ḥanbalīs with regard to *barmāʾī* animals — such as seals (Ar. lit. sea dogs), turtles, and crabs — opine that they only become permissible through slaughtering. Furthermore, they exempted ‹from this category› frogs, in addition to ‹exempting› snakes and crocodiles; They regard all three impermissible: frogs due to the prohibition of killing them; snakes due to repulsiveness; crocodiles since they have fangs with which they prey. However, they don't exempt sharks. Sharks are permissible even if they have fangs

---

[6] *Nasnās*: a creature that can be found on the Sino islands. It hops on one leg like the hopping of birds. It has a single eye and is capable of killing humans if they come within its grasp. ‹Also see the footnote to *merpeople* in the last paragraph of §16.›

[7] Imam al-Rāfiʿī (d. 623H) ﵀ was a jurist from the esteemed scholars of the Shāfiʿī *madhhab*. His most influential work is his explanation of Imam al-Ghazzālī's (d. 505H) ﵀ *Al-Wajīz fī fiqh al-Imām al-Shāfiʿī*.

[8] The full title of the work is *Rawḍah al-Ṭālibīn wa ʿUmdah al-Muftīn*. It was written by Imam al-Nawawī (d. 676H) ﵀ and is a reworking of Imam al-Rāfiʿī's (d. 623H) ﵀ *Fatḥ al-ʿAzīz fī Sharḥ al-Wajīz li-l-Ghazzālī* in order to reduce its size and simplify some of its expressions.

[9] Imam Shams al-Dīn ibn Shihāb al-Dīn al-Ramlī (d. 1004H) ﵀ was an Egyptian scholar of the Shāfiʿī *madhhab* famously known as al-Shāfiʿī al-Saghīr (lit. The Small al-Shāfiʿī). His works include *Nihāyah al-Muḥtāj Sharḥ al-Minhaj* which is an explanation of Imam al-Nawawī's (d. 676H) ﵀ *al-Ṭālibīn wa ʿUmdah al-Muftīn*. His works are used to determine the preponderant view and official stance of the Shāfiʿī *madhhab*.

[10] Imam al-Khaṭīb al-Shirbīnī (d. 977H) ﵀ was an Egyptian scholar of the Shāfiʿī *madhhab*. His work *Mughnī al-Muḥtāj ilā Maʿrifah Maʿānī Alfāẓ al-Minhāj* is considered one of the most important *shurūḥ* of the Shāfiʿī *madhhab*.

[11] Imam Ibn Ḥajr al-Haytamī (d. 973H) ﵀ was a prolific Egyptian jurist of the Shāfiʿī *madhhab*. Along with Imam al-Ramlī (d. 1004H) ﵀, he represents the foremost resource for *fatwā* for the entire late Shāfiʿī *madhhab*.

[12] *Arca noae* or the Noah's Ark shell is a species of bivalve mollusc in the family Arcidae. It is found in the Mediterranean Sea from low tide mark to a depth of 60m (200 ft). (Wikipedia)

[13] Imam Ibn ʿAdlān (d. 749H) ﵀ was a respected Egyptian jurist of the Shāfiʿī *madhhab*. He had started writing an explanation to Imam al-Muzanī's (d. 264H) ﵀ book entitled *Sharḥ Mukhtaṣar al-Muzanī* but was unable to complete it. He passed away due to the plague in Egypt.

[14] Imam ʿIz al-Dīn ʿAbd al-ʿAzīz ibn ʿAbd al-Salām (d. 660H) ﵀ was a celebrated jurist from Damascus. He had reached the level of *ijtihād* and was the leading authority in the Shāfiʿī *madhhab* of his time. He was nicknamed *Sulṭān al-ʿUlamā* (Sultan of the Scholars).

with which they prey. The apparent distinction between sharks and crocodiles is that the former is a kind of *samak* and only lives in the sea in contrast to crocodiles ‹which are amphibious.› They also said, "The method for slaughtering crabs is to do to them what would kill them: to injure [fatally] any part [of their body.]"

If a *samak* is taken alive, it is impermissible to eat it until it dies or is killed, as is the saying of the Ḥanafīs and Ḥanbalīs. Roasting it alive is *makrūh* since it is torture without reason, and also for they die quickly; it is possible to wait for their death.

19

Regarding aquatic animals, there are other *madhāhib*: From them is what Ibn Abī Laylā says: "Everything besides *samak* can be eaten but by slaughtering"; and Layth ibn Sa'd said the same thing but exempting merpeople (Ar. lit. sea humans) and dolphins (Ar. lit. sea pigs). Sufyān al-Thawrī regarding this ‹issue› has two views:

i. Everything besides *samak* is impermissible; just like the opinion of the Ḥanafīs.

ii. That they only become permissible after slaughtering; just like the opinion of Ibn Abī Laylā.

20

The evidence used by the majority to declare permissible anything that only lives in bodies of water and not elsewhere is the saying of Allāh ﷻ:

وَمَا يَسْتَوِى ٱلْبَحْرَانِ هَٰذَا عَذْبٌ فُرَاتٌ سَآئِغٌ شَرَابُهُۥ
وَهَٰذَا مِلْحٌ أُجَاجٌ ۖ وَمِن كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا
وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا ۖ وَتَرَى ٱلْفُلْكَ فِيهِ
مَوَاخِرَ لِتَبْتَغُوا۟ مِن فَضْلِهِۦ وَلَعَلَّكُمْ تَشْكُرُونَ ﴿١٢﴾

«And not alike are the two seas [i.e. bodies of water]. One is fresh and sweet, palatable for drinking, and one is salty and bitter. And from each you eat tender meat and extract ornaments which you wear, and you see the ships plowing through [them] that you might seek of His bounty; and perhaps you will be grateful.»[15]

...and:

أُحِلَّ لَكُمْ صَيْدُ ٱلْبَحْرِ وَطَعَامُهُۥ مَتَٰعًا لَّكُمْ
وَلِلسَّيَّارَةِ ۖ وَحُرِّمَ عَلَيْكُمْ صَيْدُ ٱلْبَرِّ مَا دُمْتُمْ حُرُمًا ۗ
وَٱتَّقُوا۟ ٱللَّهَ ٱلَّذِىٓ إِلَيْهِ تُحْشَرُونَ ﴿٩٦﴾

«Lawful to you is game from the sea and its food as provision for you and the travelers, but forbidden to you is game from the land as long as you are in the state of *iḥrām*. And fear Allāh to whom you will be gathered.»[16]

Allāh ﷻ didn't differentiate between what people call *samak* and what they call with other than it, such as dolphins (Ar. lit sea pigs) and merpeople (Ar. lit. sea humans) for such appellation does not make them pigs or humans.

And from the evidences is also the Prophet's *ḥadīth* when asked about making *wuḍū'* with sea water:

هُوَ الطَّهُورُ مَاؤُهُ الحِلُّ مَيْتَتُهُ

«Its water is purifying and its dead are permissible.»

And this is evidence of the permissibility of all animals that live in the sea; irrespective if caught dead or alive; and irrespective if they are *ṭāfī* or not.

They also put forth as evidence the *ḥadīth* of Dābbah al-'Anbar (lit. the 'Anbar beast, i.e the sperm whale). It is an authentic *ḥadīth* reported by Muslim from Abū al-Zubayr al-Makkī that Jābir رضي الله عنه narrated:

> The Messenger of Allah ﷺ sent us on an expedition and appointed Abū 'Ubaydah in

[15] Sūrah al-Fāṭir, Q35:12

[16] Sūrah al-Mā'idah, Q5:96

charge of us, to intercept a caravan of the Quraysh. He supplied us with a bag of dates, and we had no other provisions apart from that. Abū ʿUbaydah used to give them to us, one date at a time.

Abū al-Zubayr (the narrator) said: I said, "What did you do with it?" He said,

> We used to suck it like a child, then drink water after that, and it would suffice us for that day until night. And we used to knock down leaves with our sticks, then soak them in water and eat them. We set off along the coast and there appeared before us on the shore something like a huge mound. We came to it and saw that it was a beast called ʿAnbar (i.e. a sperm whale).
>
> Abū ʿUbaydah said, "No, it is dead meat." Then he said, "No, we are the envoys of the Messenger of Allāh ﷺ, (striving) in the cause of Allāh, and we are compelled (by hunger); eat." We lived on it for a month, three hundred of us, until we grew fat. And I remember that we extracted pitchers of fat from its eye socket, and we cut out pieces of meat like that of a bull. Abū ʿUbaydah called out thirteen of us and made them sit in its eye socket, and he took one of its ribs and set it up, then he saddled the largest camel we had with us and passed beneath it. And we supplied ourselves with preserved pieces of its meat.
>
> When we reached Madīnah, we came to the Messenger of Allāh ﷺ and told him all of that. He said, «It is provision that Allāh brought forth for you. Do you have any of its meat with you that you can give us to eat?» We sent some of it to the Messenger of Allāh ﷺ and he ate it.[17]

They extract from this *ḥadīth* four benefits:

1. That the consumption of sea animals other than *samak* is permissible in both situations: freely and out of compulsion.
2. That such animals don't need to be slaughtered.
3. That a *ṭāfī* is permissible; because it is unknown whether is died of itself or due to an external cause.
4. That the fishing activity of a Majūsī or idol worshipper has no effect on the *samak*; because if its dead ‹*samak*› are permissible, then the fishing of a Majūsī, idol worshipper, and Muslim is equal ‹in this regard›.

Similarly, small mullet fish (Malay: *ikan belanat*) are pure according to the four *madhāhib* as what is in their stomachs is forgiven due to the difficulty of its removal. Big mullet fish are pure according to the Ḥanafīs, Ḥanbalīs, Ibn al-ʿArabī,[18] and al-Dardīr[19] of the Mālikīs in opposition to the Shāfiʿīs and majority of the Mālikīs. If [still] considered pure, the consumption of mullet fish that have gone bad and changed in smell requires medical advice as to its harm or lack thereof. If trustworthy doctors say that it is harmful, then it is impermissible due to its harm to health, but permissible otherwise.

[17] Translation taken from Darussalam's English edition.

[18] Imam Ibn al-ʿArabī (d. 543H) رحمه الله was a scholar of the Mālikī *madhhab* from Andalus. His works include a commentary on Imam al-Tirmidhī's رحمه الله *ḥadīth* collection entitled *ʿĀriḍah al-Aḥwadhī*. He is not to be confused with Imam Ibn ʿArabī (d. 638H).

[19] Imam al-Dardīr (d. 1204H) رحمه الله was a prominent late jurist in the Mālikī *madhhab* from Egypt. His two books *Sharḥ al-Ṣaghīr* and *Sharḥ al-Kabīr* are some of the most important books of *fatwā* in the Mālikī *madhhab*.